

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 4011 of 2005(C)

**AGAINST THE ORDER IN OS 143 /2002 IN
OS.579/2001 of MUNSIFF COURT, VAIKOM**

PETITIONER:

**MATHEW JOSEPH, S/O. VARGHESE,
KATTOOR HOUSE, VADAYAR, KOLLAM.**

**BY ADV. SRI.K.K.VIJAYAKUMAR
SRI.RAMADAS.N.N.**

RESPONDENTS:

**ROSAMMA JAMES, W/O. JAMES,
KAVUNKAL VEEDU, KATTOOR HOUSE, VADAYAR VILLAGE,
VAIKOM, NOW RESIDING AT KAVUNKAL HOUSE,
VAZHOOR KARA, VAZHOOR VILLAGE.**

**BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 4011/2005 C

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IN OS NO.143/2002 IN MUNSIFF COURT VAIKOM.

EXT.P2. COPY OF THE WRITTEN STATEMENT IN OS NO. 149/02.

EXT.P3. COPY OF THE IA. NO. 1063/2002.

EXT.P4. COPY OF THE WORK MEMO.

EXT.P5. COPY OF THE PURCHASE CERTIFICATE IN OA NO. 85/77.

EXT.P6. COPY OF THE IA NO. 608/2004.

EXT.P7. COPY OF THE COMMISSION REPORT.

EXT.P8. COPY OF THE OBJECTION TO THE COMMISSION REPORT.

EXT.P9. COPY OF THE IA NO. 986/2004.

EXT.P10. COPY OF THE IA NO. 1173/2004.

EXT.P11. COPY OF THE ORDER IN IA NI. 986/2004.

True copy

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PIUS C. KURIAKOSE,J.

W.P.(C) No. 4011 of 2005

Dated: 11th June, 2007

JUDGMENT

Ext.P11 order by which the learned Munsiff dismissed the application for setting aside the Commissioner's report filed by the defendant who was facing a suit for recovery of possession is under challenge in this proceeding under Article 227 of the Constitution of India. Even though Mr.K.K.Vjayakumar, learned counsel for the petitioner made very fervent submissions before me, I am not persuaded to hold that Ext.P11 is tainted by infirmities to such an extent as to warrant correction in this court's jurisdiction under Article 227 of the Constitution which is visitatorial in nature and will be invoked only in exceptional circumstances. I find that in Ext.P11 the learned Munsiff has observed that it is open to the petitioner to adduce evidence during trial and substantiate that all the objections raised by the petitioner to the Commissioner's report are sustainable. In this way the learned Munsiff takes care of the petitioner's interest also and does not have to be aggrieved by the order. The Writ Petition fails and the same will stand dismissed. It is open to the petitioner to cross-examine the Commissioner as effectively as he can

and also to adduce whatever evidence at his command for substantiating his objections against the Commissioner's report.

srd

PIUS C.KURIAKOSE, JUDGE